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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,893	10/15/2003	Candace Christine Modrell	2004-1003	5953

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EXAMINER

SMALLEY, JAMES N

ART UNIT PAPER NUMBER

3727

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/685,893

Applicant(s)

MODRELL ET AL.

Examiner

James N. Smalley

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10, 15 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation "*the linear rate creating an interior protrusion is between 10 and 20 degrees*" is indefinite because it is unclear to which point of reference the rate is measured.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Kuzma et al. US 5,769,268.

Kuzma '268 teaches a lid with a bead (14) having which extends inwardly from the lid open end to a small arc, and then continues at a constant slope before continuing to the cap end wall after reaching a predetermined thickness. By being inclined, the bead inherently creates a slope rate of between 10 and 20 degrees to an arbitrary axis.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3727

6. Claim 10 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. US 3,892,351 in view of Smith US 4,222,974 and in view of Shapiro US 1,093,735.

Johnson '351 teaches a closure cap, as best seen in figure 11, comprising a linear portion extending outwardly from the lid sidewall, a small radial arc, and a wall of constant thickness. By being inclined, the bead inherently creates a slope rate of between 10 and 20 degrees to an arbitrary axis. The reference fails to teach the bead extending from the arc to the sidewall at a regular slope angle before continuing to the exterior wall at a predetermined thickness, instead teaching a radiused transition to the sidewall.

Smith '974 teaches, as best seen in figure 1, a bead comprising a sharp edge between the bead (28) and the sidewall (26).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bead of Johnson '351, providing a sharp transition between the bead and the sidewall, as taught to be known by Smith '974, because such is an expedient change in shape. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. There does not appear to be an unexpected result in the instant invention by providing a sharp transition between the bead and the sidewall. Examiner further notes the transition point shape seems arbitrary considering it does not make contact with the container bead as best seen in either patent.

Furthermore, Johnson '351 fails to teach a tab.

Shapiro '735 teaches a container cap (3) having opposed tabs (8) and teaches the tabs aid a user in the application and removal of the closure from a container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap of Johnson '351, providing a pair of tabs as taught by Shapiro '735, motivated by the benefit of providing a user with means to assist in the application and removal of the cap from a container opening.

Art Unit: 3727

7. Claim 10 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith US 4,222,974 in view of Johnson et al. US 3,892,351 and in view of Shapiro US 1,093,735.

Smith '974, in the embodiment of figure 1, teaches a closure lid with a bead (28) which extends inwardly at a linear rate, and back to the lid sidewall at a constant slope rate before continuing on toward the base wall after reaching a predetermined thickness. The reference fails to teach a small radial arc.

Johnson '351 teaches a closure cap, as best seen in figure 11, comprising a linear portion extending outwardly from the lid sidewall, a small radial arc, and a wall of constant thickness. The reference fails to teach the bead extending from the arc to the sidewall at a regular slope angle before continuing to the exterior wall at a predetermined thickness, instead teaching a radiused transition to the sidewall. One having ordinary skill would recognize a small rounded arc affords a smooth snap as the bead slips over a container bead.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lid of Smith '974, providing a small rounded arc on the tip of the bead, as taught by Johnson '351, motivated by the benefit of promoting a smooth snap across a container bead. Furthermore, Examiner note the modification is a change in shape, with no teaching of an unexpected result. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

Furthermore, Smith '974 fails to teach a tab.

Shapiro '735 teaches a container cap (3) having opposed tabs (8) and teaches the tabs aid a user in the application and removal of the closure from a container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap of Smith '974, providing a pair of tabs as taught by Shapiro '735, motivated by the benefit of providing a user with means to assist in the application and removal of the cap from a container opening.

8. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stein US 4,733,790 in view of Kuzma et al. US 5,769,268 and in view of Shapiro US 1,093,735.

Art Unit: 3727

Stein '790 teaches a container with closure lids placed on the open end and on the container bottom. Furthermore, Examiner notes the lid appears to have a bead which extends at a constant angle inward from the lid opening to form a bead, but the remaining bead structure is unclear.

Kuzma '268 teaches a lid with a bead having which extends inwardly from the lid open end to a small arc, and then continues at a constant slope before continuing to the cap end wall after reaching a predetermined thickness. Although shown engaging a container bead (12) the lid is capable of engaging the curled edge of a container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap of Stein '790, providing the bead taught by Kuzma '268, because such is an expedient sealing bead equally capable of securing to the container of Stein '790. Furthermore, modifying the bead is a change in shape, with no teaching of an unexpected result. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

Stein '790 furthermore fails to teach a tab secured to the lid.

Shapiro '735 teaches a container cap (3) having opposed tabs (8) and teaches the tabs aid a user in the application and removal of the closure from a container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap of Stein '790, providing a pair of tabs as taught by Shapiro '735, motivated by the benefit of providing a user with means to assist in the application and removal of the cap from a container opening.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 3727

**Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**NATHAN J. NEWHOUSE**  
**SUPERVISORY PATENT EXAMINER**

jns